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C O N F I D E N T I A L SECTION 01 OF 08 BRUSSELS 000218

SIPDIS

STATE FOR INL, S/CT, CA, INL/PC, INL/AAE, EUR/ERA, L/LEI;
JUSTICE FOR CRIMINAL DIVISION, OFFICE OF INTERNATIONAL
AFFAIRS;
HOMELAND SECURITY FOR OFFICE OF POLICY, OFFICE OF
INTERNATIONAL AFFAIRS

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TAGS: [KCRM](#) [PGOV](#) [PREL](#) [SNAR](#) [EUM](#) [CZ](#)

SUBJECT: DISCUSSIONS AT U.S.-EU JUSTICE AND HOME AFFAIRS
INFORMAL MEETING DEMONSTRATE BROAD CONVERGENCE ON SECURITY
AND CRIME ISSUES

Classified By: COUNSELOR FOR INTERNATIONAL NARCOTICS AND
LAW ENFORCEMENT AFFAIRS JAMES MCANULTY FOR 1.4 B AND D

¶1. (U) This is an action request telegram; please see
paragraph 29.

SUMMARY

¶2. (C) Participants at the U.S.-European Union (EU) Justice
and Home Affairs (JHA) Informal Meeting in Prague February 5
to 6, 2009, engaged in a wide-ranging discussion of
cooperation against terrorism and transnational crime. Both
sides agreed on most objectives, including the need to
complete ratification of the U.S.-EU Mutual Legal Assistance
and Extradition Agreements, address drug trafficking in
Afghanistan and West Africa, consult more regularly on
technical assistance and training programs, and investigate
and prosecute child exploitation. EU officials pledged to
press three remaining Member States -- Belgium, Greece, and
Italy -- to ratify the mutual legal assistance and
extradition agreements. Although reluctant to commit to a
proposed HLCG work schedule, the Czech Presidency of the
Council of the EU agreed to schedule a digital video
conference (DVC) before April's JHA Ministerial meeting. END
SUMMARY.

PARTICIPANTS

¶3. (U) The U.S. Delegation. co-chaired by INL Deputy
Assistant Secretary (DAS) Elizabeth Verville and Deputy
Assistant Attorney General Bruce Swartz, included State
Department Counter-Terrorism Deputy Coordinator for Homeland
Security Susan Burk, Mission Senior Justice Counselor for the
EU and International Criminal Law Affairs Mary Lee Warren,
INL Counselor James McAnulty, Senior Consular Representative
Paul Fitzgerald, Department of Homeland Security (DHS)
Attache Jackie Bednarz, State Law Enforcement and
Intelligence Attorney-Adviser Kenneth Propp, Justice Office
of International Affairs Multilateral Matters Associate
Director Thomas Burrows, DHS International Affairs Director
Michael Scardaville, INL Policy Coordination and Planning
Foreign Affairs Officer Scott Harris, European Union and
Regional Affairs Foreign Affairs Officer Alessandro Nardi,
Embassy Political-Economic Officer James Connell,

Political-Economic Officer Amy Carnie, and Consular Officer Scott Riedmann. The EU Delegation, co-chaired by Czech Interior Ministry Presidency and EU Coordination Department Head Katerina Flaigova and Czech Justice Ministry International Law Director Jan Samanek, included EU Counter-Terrorism Coordinator Gilles de Kerchove, Council Secretariat JHA Deputy Director-General Rafael Fernandez-Pita, European Commission Justice, Freedom, and Security Director Tung-Lai Margue, European Police Office (EUROPOL) Director Max-Peter Ratzel, European Judicial Coordination Unit (EUROJUST) Vice President Malci Gabrijelcic, Czech Interior Ministry Officials Jitka Gjuricova, Tomas Haisman, and Martin Linhart, JHA Head of Unit Petr Solsky of the Czech Permanent Representation to the EU, European Border Management Agency (FRONTEX) External Relations Officer Rick Weijermans, Council Secretariat JHA Principal Administrator Wouter Van de Rijt, Commission External Relations and Enlargement Deputy Head of Unit Heike Buss, Commission Desk Officer for U.S. and Canada Nora Rolle, Swedish officials Tora Wigstrand. Paula Wennerblom, Roger Gustafsson. and Emanuel Allroth, and other officers from the Czech Ministries of Interior and Justice and the Czech Permanent Representation to the EU.

JHA PRIORITIES

14. (U) Flaigova and Samanek briefly outlined Czech Presidency priorities, including use of technologies for promoting security, maintaining balance between security and civil

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rights, fighting drug trafficking and diversion of precursor chemicals, combating child exploitation and illicit content on the Internet, and promoting cooperation on civil law matters. With the caveat that it was too early in the new U.S. Administration to offer any specifics, Verville and Swartz noted considerable overlap between the delegations' U.S. and Czech Presidency priorities. They reiterated U.S. interest in thwarting terrorist attacks, promoting rule of law, fighting drug trafficking in Afghanistan and West Africa, ratifying the U.S.-EU Mutual Legal Assistance and Extradition Agreements, completing HLCG work on data privacy principles, coordinating technical assistance, fighting organized crime in the Western Balkans, and closing Guantanamo Bay detention facilities.

HIGH LEVEL CONTACT GROUP

15. (C) The U.S. underlined the importance of completing the vital work of the HLCG in preparing for a binding international agreement on data privacy principles governing the transatlantic sharing of law enforcement information. Swartz proposed an energetic agenda of meetings and digital video conferences (DVCs) to complete the few remaining issue discussions and begin work on the foundation, framework, and objectives for negotiation of a binding international agreement. Flaigova commended the "great progress" achieved to date, but said a binding agreement could not be negotiated until the Lisbon Treaty entered into force. (N.B., The treaty faces a second referendum in Ireland later this year after suffering a "no" vote last June; also, the Czech Republic and Germany have yet to complete their ratification process). Warning that premature activities could risk results already achieved, she suggested keeping discussions at the "experts" level. Although Commission Director Margue said he agreed with continuing technical meetings "as far as possible," he characterized the proposed schedule as optimistic. He envisioned the Irish holding their second referendum in October, to be followed by entry into force of the treaty on January 1, 2010. He stated that any further discussion should be deferred until that time. Swartz underscored the importance of laying a "foundation" for moving quickly

towards a formal agreement. Warren warned that a lapse in discussions could lead to repeat discussions of settled issues and interruption of law enforcement sharing under the EU Framework Decision on Data Protection. Verville stressed the importance of both sides proceeding towards final agreement. Margue declared that the Framework Decision would have little immediate impact, as Member States would take a full two years to implement it. Warren declined to comment on Member States' pace but rather focused on the possible harm that could be suffered if vigorous sharing of law enforcement information were impaired by the uncertainty of such a hiatus. Saying she understood all these factors, Flaigova expressed hope for reaching "middle" ground and, near the close of the meeting, agreed on scheduling one DVC HLCG experts meeting before the late April Ministerial.

16. (C) COMMENT: It became clear, during and on the margins of the meeting, that the pace of the HLCG experts' work was not a unanimously held position within the EU delegation. Generally, the Commission intended to hold off further discussions, and the Presidency was not prepared to take on the necessary leadership tasks. On the other hand, Council representatives pressed for the HLCG to finish its work and planned to work behind-the-scenes to this end. The U.S. delegation considered the fiat for delay a predictable but substantial set-back in a priority area that has implications for slowing progress on several other issues. END COMMENT.

MUTUAL LEGAL ASSISTANCE AND EXTRADITION AGREEMENTS

17. (C) Propp reported that the United States had completed its ratification procedures for the U.S.-EU Mutual Legal Assistance and Extradition Agreements and inquired about EU

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progress. Samanek reported that Italy and Greece had just submitted the agreements to their parliaments, and Belgium planned to do so shortly. The Council Secretariat planned to raise the issue again at the Article 36 Committee Meeting in February. Propp advocated applying pressure at more senior levels, noting that U.S. Ambassadors had already approached Foreign Ministers and Parliamentary leaders. Verville observed that final ratification would be a "huge achievement." Samanek said he understood the urgency, given the need to ratify them before entry into force of the Lisbon Treaty. De Kerchove said he raised this issue at the JHA Council in November and followed up with the Greek Foreign Minister and Belgian Parliament. He wrote to Italian Foreign Minister Franco Frattini, but had not yet received a reply. Margue said JHA Commissioner Jacques Barrot would apply pressure to the three remaining Member States. Propp noted that the exchange of designation points required by the new agreements was proceeding in a "rolling" fashion and would not be a cause for delay of the final entry into force.

18. (U) Warren briefed on the mutual legal assistance seminar for practitioners sponsored by the U.S., EUROJUST, and the Commission at The Hague last November. She observed that the agreements contain many innovative tools that investigators and judges will find useful in fighting transnational crime and terrorism. The EU-EUROJUST-U.S. organizers will explore an array of follow-on seminars and workshops and prepare an implementation manual. Samanek, who heard "extremely positive" reports, suggested distributing materials more widely. Margue echoed the positive reports and signaled that the Commission would find the funds to support follow-on efforts.

LOST AND STOLEN PASSPORTS

¶9. (C) Margue summarized the Commission's review of Member State implementation of the EU Common Position on reporting stolen and lost passports through the International Criminal Police Organization (INTERPOL). EU Member States had submitted over two-thirds of INTERPOL's entries and made over half the queries to its database. Scardaville said DHS had deployed an automated system to all international U.S. airports and seaports and would soon expand it to land border stations. Customs and Border Protection (CBP) inspectors now check 3 to 3.5 million records monthly and are "thrilled" with the program, including EU compliance with INTERPOL Best Practices and the EU Common Position. At Bednarz's request, Margue agreed to look into making the source data of the Commission's evaluation report available.

COORDINATION ON TECHNICAL ASSISTANCE

¶10. (U) Verville advocated more frequent coordination on technical assistance where both sides have "compatible" interests. She expressed appreciation for fact sheets exchanged last July on the Western Balkans, noting that most programs appeared free of conflicts. She suggested more systematic exchanges of information among those planning and managing technical assistance programs. Meetings of U.S. and EU experts in Washington and Brussels would be helpful. Margue agreed. Swartz advocated joint meetings of Commission and U.S. Liaison Officers in the region and Margue concurred, noting that a first meeting could occur on a trial or ad hoc basis and should have a specific, focused agenda. De Kerchove added that such meetings should also include Member State Liaison Officers.

¶11. (C) Verville expressed concern over rising crime in Croatia and noted that the U.S. had recently extended by one year its organized crime program there. Margue agreed with this assessment of Croatia, which remained engaged in the EU enlargement process. He welcomed applying pressure on Croatia in areas that need improvement, including a more independent judiciary and measures against organized crime

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and corruption. The EU wanted to avoid mistakes from past instances of EU enlargement. Overall, he advocated a more regional approach and welcomed feedback on effective programs and exchanges of best practices. (COMMENT: Coordinated strategic planning marks an important step forward, especially in resource-scarce times. END COMMENT.)

¶12. (C) Swartz praised the operational activities of the South East European Cooperation Initiative (SECI) Center in fighting organized crime in the Balkans. Ratzel said the Council had prepared a "road map" for finishing a South East European Law Enforcement Center (SELEC) Convention, which needed to include data protection commitments. Verville cautioned that upgrading SECI's charter must not hinder ongoing cooperation among members. (COMMENT: The following week, Warren, McAnulty, and Resident Legal Advisor Justin Weddle met with EUROPOL officials in Brussels to discuss SECI's future. EUROPOL interlocutors agreed to explore the idea of assigning a liaison officer at SECI as part of a pilot project. END COMMENT.)

¶13. (C) Verville said the U.S. remained concerned over potential instability in West Africa, citing the attempted coup in Guinea Bissau as an example. Flaigova said organized crime, corruption, and the flow of cocaine through the region presented serious challenges to the entire EU. Margue noted that the Commission supported the Regional Action Plan agreed in Praia last October. As a result of Member State cooperation with the Maritime Analysis and Operations Center (MAOC), authorities had seized 34 metric tons of cocaine and 21 metric tons of hashish since June 2007. He praised cooperation by Joint Interagency Task Force -- South (JIATF-South) in contributing to such successes. Warren

commended efforts of the U.S. Drug Enforcement Administration (DEA) in sharing information and promoting best practices with police commissioners and mid-level police officers in the region. Verville noted INL efforts to promote capacity-building in various countries, including Nigeria and Liberia, to fight money laundering, effect asset seizures, and prepare mutual legal assistance requests. Remarking on earlier, "very close" cooperation by INL officials with the Financial Intelligence Unit (FIU) and the Economic and Financial Crime Commission (EFCC) in Nigeria, she lamented recent personnel changes that "decimated" these institutions. Commission representatives, for their part, agreed to look into and monitor this situation more closely.

AFGHANISTAN

¶14. (C) Verville observed that addressing the drug trade in Afghanistan would be a major priority of the new Administration. According to the latest UN estimates, poppy and opium production had declined during the past year. Cultivation now occurred overwhelmingly in seven, high-producing provinces in the south, which will become the focus of counter-drug efforts. According to Flaigova, the EU and Member States spent 428 million euros in Afghanistan during 2006. They viewed Afghanistan as a "long-term, large-scale problem" with no easy solutions. Margue added that a major challenge would be to sustain progress in the northern and eastern provinces. The EU planned to focus on the east, particularly on alternative livelihoods and regional development. Verville suggested greater support for performance-based, development programs, including the Good Performers Initiative.

UN CONVENTIONS

¶15. (U) Verville reviewed recent developments in implementation of United Nation conventions against corruption and organized crime. The Fourth Conference of Parties last October "breathed life" into these instruments, resulting in a doubling of action-oriented decisions. The UN Office of Drugs and Crime is working on model legislation for the migrant smuggling protocol. During its Presidency of the

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Group of Eight, Italy planned to focus on implementation of the Palermo convention on organized crime. Verville commended self-assessment checklists on implementation as containing valuable information for donor countries to consult.

¶16. (C) Flaigova pressed on behalf of EU colleagues for the U.S. to reconsider its position on "harm reduction," noting keen EU interest in including this phrase in the political declaration of the UN General Assembly Special Session (UNGASS) on the UN Drug Convention. Verville explained that the U.S. considered this phrase to be "ambiguous," with some associated practices used in the U.S. while others were prohibited. This issue is under review.

CHILD PROTECTION

¶17. (U) The EU side provided an overview of child protection efforts, including measures to reduce illicit Internet content, improve "Safe for Internet" programs, decrease instances of cyber-bullying, and promote self-regulation by mobile telephone and social networking companies. The Czech Presidency planned child protection seminars in Prague, from March 17 to 18 (criminal law, on April 20 (safer Internet for children), and from May 18 to 20 (child alert systems, to which U.S. experts would be invited. The Council Secretariat

adopted conclusions in December to promote establishment of "Child Alert" Systems in the EU. EU officials would appreciate hearing about U.S. experiences in implementing analogous "Amber Alert" systems. The Commission planned to revise an existing framework decision to facilitate blocking of objectionable Internet sites. Swartz responded that U.S. experts would participate and be willing to share experiences, including information on implementation of U.S. "blocking laws. Burrows said the U.S. would focus on big-impact cases involving prosecutions of web sites with numerous customers and associated payment processors and "clubs." Warren noted ongoing coordination through EUROJUST of criminal investigations of international child predator rings. She proposed that the U.S. and EU form an exploratory group to consider ways to work together across the broad spectrum of child protection topics. Gabrijelcic and Ratzel saw benefit in such a proposal. Verville offered a fact sheet on the full range of U.S. child protection efforts.

INTERNET EXTREMISM

¶18. (U) Linhart detailed successes in stopping the spread of extremism and hatred through the Internet as part of EU counter-terrorism efforts. Member States have differing legislation, but the EU has attempted to coordinate standard approaches. He lamented that eliminating offensive web sites remained difficult, particularly where third countries hosted such sites. Noting potential First Amendment limits, Swartz said the U.S. could take down web sites if they provided "material support" to terrorists.

SEMINAR ON EXPLOSIVES

¶19. (U) Warren and Bednarz briefed on the experts seminar on explosives held in Brussels in late 2008. The EU side expressed interest in additional seminars on detecting explosives and preventing their use in terrorist attacks.

PASSENGER NAME RECORDS (PNR) AGREEMENTS

¶20. (C) Flaigova provided an update on EU ratification of the U.S.-EU Passenger Name Records (PNR) Agreement, noting that six Member States had yet to complete their procedures. Regarding the Czech Republic, the Senate had approved the agreement in 2007, but the House still had the agreement

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under consideration. Margue expressed interest in scheduling a joint U.S.-EU review of U.S. PNR implementation in the next month or two. Scardaville, noting the recent arrival of new DHS leadership and the need to set parameters for the review beforehand, said that a later date, perhaps May or June, would be more likely. Margue also noted that the European Airline Association had complained to the Commission about continued payment of fees for a "pull" system to transmit data, despite implementation of the preferred "push" system. Scardaville said technical glitches continued to undermine the "push" system. He promised to press CBP technicians to respond more quickly to Amadeus counterparts to resolve problems.

¶21. (C) Regarding a proposed EU PNR system, Margue reported that a draft Framework Decision remained under consideration by the Council since November 2007. Given continued criticism by the European Parliament, he admitted that this legislation would not gain approval before the anticipated entry into force of the Lisbon Treaty.

CRITICAL INFRASTRUCTURE PROTECTION

¶22. (C) Scardaville and Burk described U.S. efforts on critical infrastructure protection (CIP). Of 3,000 critical infrastructure items currently listed, U.S. officials have identified 300 as priorities. The National Critical Infrastructure Center maintains a web site for consultation by officials involved in CIP efforts. State and Homeland Security officials cooperate on sharing best practices and organizing emergency response exercises. The U.S. also coordinates with the Group of Eight, North Atlantic Treaty Organization (NATO), and the Organization for Security and Cooperation in Europe (OSCE). Margue stated Commission interest in working with third countries to protect the energy and transport sectors. Bednarz urged EU counterparts to consider including cyber-security in their plans.

VISA WAIVER PROGRAM

¶23. (U) Participants described recent developments in the U.S. Visa Waiver Program (VWP). During 2008, seven additional EU Member States, including the Czech Republic, qualified for VWP. DHS officials will soon reply to a European Commission letter seeking formal closure of its parallel track on VWP. Scardaville noted that older VWP members must comply with new security enhancements required by U.S. law, but he did not anticipate problems. Bednarz said the Secretary of Homeland Security must certify implementation of a U.S. biometric "exit" system by the end of June 2009 to allow continued use of provisions facilitating entry of additional nations. The EU expressed satisfaction with progress to date, but cautioned that VWP would remain an important issue until all Member States become members.

ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION

¶24. (C) Scardaville indicated that most travelers have complied with the requirement to obtain an Electronic System for Travel Authorization (ESTA) number before boarding aircraft headed for the United States. DHS officials have implemented a flexible system of "enforced compliance" since January 12. Bednarz noted that some 2.5 million travelers had applied thus far, with an approval rate above 99.5 percent. ESTA has the added advantage of identifying potential immigration problems for travelers, thereby allowing time to correct them before travel. EU officials confirmed that they did not consider ESTA to be a visa.

BORDER MANAGEMENT -- VIS AND SIS-II

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25, (C) The EU has encountered problems in implementing the Visa Information System (VIS) and the second generation of the Schengen Information System (SIS-II). EU officials anticipated progress on VIS by the end of 2009, but SIS-II has much greater difficulties. Margue expressed interest in learning from U.S. experiences in implementing the U.S. VISIT system, given EU plans to implement an "entry-exit" system employing finger print readers. The U.S. and EU agreed to share technical "lessons learned" in implementing biometric entry-exit systems.

COOPERATIVE ARRANGEMENT WITH FRONTEX

¶26. (C) According to Margue, the Commission has been working with FRONTEX to "fine-tune" a proposed cooperative arrangement with the U.S., primarily to incorporate

appropriate data privacy provisions. The U.S. questioned the need for such provisions, given that FRONTEX does not currently handle personal data. Margue responded that the Commission merely sought "technical adjustments" and had no differences on policy. DHS urged that the signing of the agreement would be an appropriate deliverable for the JHA Ministerial in late April.

CIVIL LAW

¶27. (C) EU officials outlined their efforts to enhance internal cooperation on civil law issues, including implementation of international agreements on child abduction, child support, and choice of courts. They expressed interest in exchanging best practices and coordinating future negotiating positions. Propp welcomed EU support for the Choice of Court and Child Support Conventions, noting that the U.S. remained the sole signatory, to date, for these agreements. He promised to provide contact information for State's Private International Law office, which handles civil law issues. (COMMENT: The already over-sized JHA agenda had not previously included civil law issues, and Verville learned from the Swedish delegation that these issues would not be carried over in the JHA agenda during the next Presidency. END COMMENT.)

SWEDISH PRESIDENCY PRIORITIES

¶28. (U) Swedish Government representatives described their priorities for the upcoming Swedish Presidency, which starts July 1. They listed climate and energy, implementation of a Baltic Sea Strategy, EU Enlargement, and JHA Issues as among their top priorities. Under JHA, they planned to prepare the Stockholm Program -- a five-year plan of action on JHA issues (from 2010 to 2014) to follow up the Hague Program -- and focus on child protection, migration, trafficking in human beings, and individual rights in criminal proceedings.

RECOMMENDATIONS FOR FOLLOW UP

¶29. (C) Along with a list of numerous follow-up action items from the JHA Informal Meeting (forwarded separately), Mission recommends the following priority actions to enhance police and judicial cooperation with the EU:

-- Convince the EU, particularly the European Commission, to complete the vital work of the HLCG to lay the foundation for negotiation and signing of a binding international agreement on data privacy principles without delay.

-- Press Belgium, Greece, and Italy at the highest levels to ratify the U.S.-EU Mutual Legal Assistance and Extradition Agreements this year.

-- Develop comprehensive strategies for future engagement

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with the EU on law enforcement issues, taking into account the differing impacts of EU ratification or rejection of the Lisbon Treaty.

COMMENT

¶30. (C) Overall, discussions reflected transatlantic consensus on most important security and criminal justice issues, including organized crime, drug trafficking, child exploitation, migration, and border security. Czech Presidency reluctance to engage in a robust schedule to

complete HLCG work demonstrated internal EU divisions over how to proceed and lack of Czech familiarity with this portfolio. Additional encouragement of the Czechs and persuasion of the Commission on this important issue will be needed. END COMMENT.

MURRAY

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